

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL MENZIES,

Plaintiff

19 Civ. 11235 (JGK)

-against-

LONG ISLAND RAILROAD COMPANY,

Defendant.

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**PLAINTIFF'S SUPPLEMENTAL CHARGE REGARDING
MITIGATION**

DATED: Garden City, NY
January 11, 2022

FLYNN & WIETZKE, PC
Attorneys for Plaintiff
1205 Franklin Avenue
Garden City, NY 11530
(516) 877-1234

TO: William Blumenschein, Esq.
Krez & Flores, LLP
225 Broadway, Suite 2800
New York, NY 10007

Mitigation

Plaintiff must make every reasonable effort to minimize or reduce Plaintiff's damages for loss of compensation by seeking employment. This is referred to as "mitigation of damages."

Defendant must prove by a preponderance of the evidence that Plaintiff failed to mitigate Plaintiff's damages for loss of compensation.

If you determine Plaintiff is entitled to lost compensation, you must reduce the loss by:

1. What Plaintiff earned and
2. What Plaintiff could have earned by reasonable effort during the period when Plaintiff ceased working for the railroad until the date of trial.

Plaintiff must accept employment that is "of a like nature." In determining whether employment is "of a like nature," you must consider:

1. The type of work,
2. The hours worked,
3. The compensation,
4. The job security,
5. The working conditions,
6. Other conditions of employment.

You must decide whether Plaintiff acted reasonably in not seeking or accepting a particular job. If you determine Plaintiff did not make reasonable efforts to obtain another similar job, you must decide whether any damages resulted from Plaintiff's failure to do so.

You must not compensate Plaintiff for any portion of Plaintiff's loss of compensation resulting from Plaintiff's failure to make reasonable efforts to reduce Plaintiff's loss of compensation.

3A O'Malley, J. Grenig and W. Lee, Federal Jury Practice and Instructions, § 155.66 (6th Ed. 2013)